

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2504

To extend the protections of Federal labor and civil rights laws to part-time, temporary, and leased employees, independent contractors, and other contingent workers, and to ensure equitable treatment of such workers.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, SEPTEMBER 12), 1994

Mr. METZENBAUM (for himself and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To extend the protections of Federal labor and civil rights laws to part-time, temporary, and leased employees, independent contractors, and other contingent workers, and to ensure equitable treatment of such workers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Contingent Workforce  
5   Equity Act”.

### 6   **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

1           (1) the number of part-time, temporary, leased,  
2           and other contingent workers is increasing in num-  
3           bers and as a percentage of the workforce as a  
4           whole;

5           (2) Federal personnel practices have contrib-  
6           uted to the increasing use of contingent workers;

7           (3) on average, contingent workers earn sub-  
8           stantially less than full-time workers and are less  
9           likely to receive employer-provided health, pension,  
10          or other basic benefits;

11          (4) many contingent workers are excluded from  
12          coverage under State unemployment insurance laws;

13          (5) many contingent workers are excluded from  
14          the basic worker protections of Federal labor and  
15          civil rights laws;

16          (6) many employers misclassify their employees  
17          as independent contractors to avoid the require-  
18          ments of social security, unemployment insurance,  
19          workers' compensation, and other laws; and

20          (7) contingent workers are entitled to fair  
21          wages and benefits, protections under Federal labor  
22          and civil rights laws, and coverage under State un-  
23          employment insurance laws, where feasible.

24          (b) PURPOSES.—The purposes of this Act are to—

1           (1) discourage employers from replacing full-  
2           time positions with part-time, temporary, or other  
3           contingent positions as a means of lowering labor  
4           costs or avoiding the requirements of Federal or  
5           State employment or employment-related laws;

6           (2) extend the protections of Federal labor and  
7           civil rights laws to contingent workers; and

8           (3) extend coverage under State unemployment  
9           insurance laws to contingent workers, where feasible.

## 10 **TITLE I—WORKER PROTECTIONS**

### 11 **SEC. 101. MINIMUM WAGE.**

12           Section 6(a)(1) of the Fair Labor Standards Act of  
13           1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

14           “(1) except as otherwise provided in this sec-  
15           tion—

16                   “(A) not less than—

17                           “(i) \$4.25 an hour during the period  
18                           ending on December 31, 1994;

19                           “(ii) \$4.85 an hour during the year  
20                           beginning on January 1, 1995;

21                           “(iii) \$5.55 an hour during the year  
22                           beginning January 1, 1996;

23                           “(iv) \$6.20 an hour during the year  
24                           beginning January 1, 1997; and

1                   “(v) \$6.75 an hour during the year  
2                   beginning January 1, 1998; and

3                   “(B) with respect to the year beginning on  
4                   January 1, 1999, and each such succeeding  
5                   year, not less than the amount applicable under  
6                   clause (v) of subparagraph adjusted on October  
7                   1 of the previous year to equal 50 percent of  
8                   the monthly average hourly earnings for non-  
9                   farm, nonsupervisory private workers for the  
10                  preceding 12 months, as determined by the Bu-  
11                  reau of Labor Statistics, rounded to the nearest  
12                  multiple of \$0.05, except that any amount de-  
13                  termined under this subparagraph shall not be  
14                  less than the amount applicable under this  
15                  paragraph for the preceding year;”.

16 **SEC. 102. EQUAL PAY.**

17           Section 6 of the Fair Labor Standards Act (29  
18 U.S.C. 206) is amended by adding at the end thereof the  
19 following:

20           “(g)(1) No employer having employees subject to any  
21 provisions of this section shall discriminate, within any es-  
22 tablishment in which such employees are employed, be-  
23 tween employees on the basis of employment status by  
24 paying wages to part-time or temporary employees in such  
25 establishment at a rate less than the rate at which the

1 employer pays wages to full-time employees in such estab-  
2 lishment for equal work on jobs the performance of which  
3 requires equal skill, effort, and responsibility, and which  
4 are performed under similar working conditions, except  
5 where such payment is made pursuant to—

6 “(A) a seniority system;

7 “(B) a merit system;

8 “(C) a system that measures earnings by quan-  
9 tity or quality of production; or

10 “(D) a differential based on any other factor  
11 other than employment status.

12 An employer who is paying a wage rate differential in vio-  
13 lation of this subsection shall not, in order to comply with  
14 the provisions of this subsection, reduce the wage rate of  
15 any employee.

16 “(2) No labor organization, or its agents, represent-  
17 ing employees of an employer having employees subject to  
18 any provisions of this section shall cause or attempt to  
19 cause such an employer to discriminate against an em-  
20 ployee in violation of paragraph (1).

21 “(3) For purposes of administration and enforce-  
22 ment, any amounts owing to any employee that have been  
23 withheld in violation of this subsection shall be deemed  
24 to be unpaid minimum wages or unpaid overtime com-  
25 pensation under this Act.

1       “(4) As used in this subsection, the term ‘labor orga-  
 2   nization’ means any organization of any kind, or any agen-  
 3   cy or employee representation committee or plan, in which  
 4   employees participate and which exists for the purpose,  
 5   in whole or in part, of dealing with employers concerning  
 6   grievances, labor disputes, wages, rates of pay, hours of  
 7   employment, or conditions of work.’”.

8   **SEC. 103. CIVIL RIGHTS.**

9       Section 1977(a) of the Revised Statutes (42 U.S.C.  
 10   1981(a)) is amended to read as follows:

11       “(a)(1) All persons within the jurisdiction of the  
 12   United States shall have the right in every State and Ter-  
 13   ritory—

14               “(A) to make and enforce contracts free from  
 15       unlawful discrimination based on race, color, reli-  
 16       gion, sex, national origin, age, or disability; and

17               “(B) to sue, be parties, give evidence, and to be  
 18       subject to punishment, pains, penalties, taxes, li-  
 19       censes, and exactions, free from such unlawful dis-  
 20       crimination.

21       “(2) For purposes of determining the existence of un-  
 22   lawful discrimination under paragraph (1)—

23               “(A) in the case of a claim of unlawful discrimi-  
 24       nation based on race, color, religion, sex, or national  
 25       origin, the same legal standards shall apply as are

1 applicable under title VII of the Civil Rights Act of  
 2 1964 (42 U.S.C. 20000e et seq.);

3 “(B) in the case of a claim of unlawful discrimi-  
 4 nation based on age, the same legal standards shall  
 5 apply as are applicable under the Age Discrimina-  
 6 tion in Employment Act of 1967 (29 U.S.C. 621 et  
 7 seq.); and

8 “(C) in the case of a claim of unlawful discrimi-  
 9 nation based on disability, the same legal standards  
 10 shall apply as are applicable under the Americans  
 11 with Disabilities Act (42 U.S.C. 12101 et seq.).”.

12 **SEC. 104. COLLECTIVE BARGAINING RIGHTS.**

13 (a) DETERMINATION OF BARGAINING UNITS.—Sec-  
 14 tion 9(b) of the National Labor Relations Act (29 U.S.C.  
 15 159(b)) is amended—

16 (1) by striking “; or (2)” and inserting “or”;  
 17 and

18 (2) by striking “or (3)” and inserting “; (3) de-  
 19 cide that an employee shall be excluded from a unit  
 20 otherwise appropriate for the purposes of collective  
 21 bargaining based on the employee’s part-time or  
 22 temporary status, if such employee (A) has a reason-  
 23 able expectation of continued employment; and (B)  
 24 is employed by the employer on the date on which  
 25 eligibility for participation in a representation elec-

1       tion is determined and on the date of the election;  
2       or (4)''.

3       (b) JOINT EMPLOYER STATUS.—Section 2(3) of the  
4 National Labor Relations Act (29 U.S.C. 152(3)) is  
5 amended by adding at the end thereof the following: “An  
6 individual employed by a contractor of an employer shall  
7 be considered an employee of the employer if the individual  
8 is assigned on a regular basis to perform work on the  
9 premises of the employer, and the tasks performed by such  
10 individual are functionally integrated with the operations  
11 of the employer.”.

12 **SEC. 105. OCCUPATIONAL SAFETY AND HEALTH.**

13       Section 5(a)(1) of the Occupational Safety and  
14 Health Act (29 U.S.C. 654(a)(1)) is amended to read as  
15 follows:

16           “(1) shall furnish employment and a place of  
17 employment that are free from recognized hazards  
18 that are causing or are likely to cause death or seri-  
19 ous physical harm to the employees of the employer  
20 or to individuals who are employed by another em-  
21 ployer and are performing services at such place of  
22 employment;”.

1 **SEC. 106. ADVANCE NOTICE OF LAYOFFS AND PLANT CLOS-**  
 2 **INGS.**

3 Section 2 of the Worker Adjustment and Retraining  
 4 Notification Act (29 U.S.C. 2101 et seq.) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), to read as follows:

7 “(1) the term ‘employer’ means any business  
 8 enterprise that employs 100 or more employees;”;

9 (B) in paragraph (2), by striking “exclud-  
 10 ing any part-time employees”;

11 (C) in paragraph (3), by striking “(exclud-  
 12 ing any part-time employees)” each place such  
 13 term appears; and

14 (D) by striking paragraph (8); and

15 (2) in subsection (b)(1), by striking “(other  
 16 than a part-time employee)”.

17 **SEC. 107. CONTINGENT WORKFORCE SURVEY.**

18 The Secretary of Labor, acting through the Commis-  
 19 sioner of the Bureau of Labor Statistics, shall establish  
 20 and carry out an annual survey identifying—

21 (1) the characteristics of temporary workers in  
 22 the United States;

23 (2) the relationship between such workers and  
 24 the establishments at which such workers are tempo-  
 25 rarily employed; and

1           (3) where appropriate, the relationship between  
2       such workers and their permanent employers.

3   **SEC. 108. FEDERAL SERVICE CONTRACT SUCCESSORSHIP.**

4       Section 4(c) of the Service Contract Act of 1965 (41  
5   U.S.C. 353(c)) is amended—

6           (1) by striking “(c) No” and inserting “(c)(1)  
7       No”; and

8           (2) by adding at the end the following new  
9       paragraphs:

10       “(2)(A) Except as provided in subparagraph (B), a  
11   contractor under a successor contract (under which sub-  
12   stantially the same services are performed) shall, in good  
13   faith, provide a right of first refusal of employment under  
14   that contract to each employee employed under the prede-  
15   cessor contract. If, under the successor contract, the num-  
16   ber of employees to be employed is less than the number  
17   of employees employed under the predecessor contract, the  
18   contractor shall provide such right to the employees on  
19   the basis of seniority.

20       “(B) Notwithstanding the requirements of subpara-  
21   graph (A), a contractor shall not be required to provide  
22   a right of first refusal of employment to an employee em-  
23   ployed under the predecessor contract if—

24           “(i) the contractor reasonably believes, based on  
25       the past performance of the employee under the

1 predecessor contract, that the employee is unable to  
2 perform the work suitably under the successor con-  
3 tract; or

4 “(ii) if such action would require the contractor  
5 to lay off or discharge an employee who has worked  
6 continuously for the contractor for not less than the  
7 60-day period immediately preceding the commence-  
8 ment of the successor contract.

9 “(C) A contractor satisfies the requirement under  
10 subparagraph (A) to provide employees under the prede-  
11 cessor contract with a right of first refusal of employment  
12 under a successor contract on the basis of seniority if the  
13 contractor provides such right first to the most senior em-  
14 ployees and then to the other employees on the basis of  
15 descending order of seniority until all of the positions of  
16 employment are filled or all employees under the prede-  
17 cessor contract have exercised the right, whichever occurs  
18 first. Seniority shall be determined on the basis of length  
19 of service under the predecessor contract and each con-  
20 tract, if any, that preceded the predecessor contract.

21 “(D) In subparagraph (A), the term ‘contractor’,  
22 with respect to a successor contract, includes a sub-  
23 contractor performing the obligations of the contractor  
24 under such contract.

1       “(3) The Secretary shall issue an order against any  
2 contractor or subcontractor under a successor contract  
3 who fails to hire an individual in accordance with this sub-  
4 section. The order shall require the contractor or sub-  
5 contractor to hire any individual whom the contractor or  
6 subcontractor has unlawfully failed to hire and to com-  
7 pensate the individual for any wages and fringe benefits  
8 that the individual would have received if the individual  
9 would have been hired by the contractor or subcontractor.  
10 Any amount that the Secretary determines is owed to an  
11 individual by a contractor or subcontractor under this  
12 paragraph may be withheld from any accrued payment  
13 due on the successor contract or any other contract be-  
14 tween the contractor and the Federal Government.

15       “(5)(A) This subsection shall not apply to contracts  
16 awarded pursuant to the Javits-Wagner-O’Day Act, or  
17 under which services are provided to the Federal Govern-  
18 ment on an intermittent basis.

19       “(B) In subparagraph (A), the term ‘Javits-Wagner-  
20 O’Day Act’ means the Act entitled ‘An Act to create a  
21 Committee on Purchases of Blind-made Products, and for  
22 other purposes’, approved June 25, 1938 (41 U.S.C. 46–  
23 48c), commonly referred to as the Wagner-O’Day Act,  
24 that was revised and reenacted in the Act of June 23,

1 1971 (85 Stat. 77), commonly referred to as the Javits-  
2 Wagner-O'Day Act.”.

## 3 **TITLE II—EMPLOYEE BENEFITS**

### 4 **SEC. 201. FAMILY AND MEDICAL LEAVE.**

5 Section 101(2)(A) of the Family and Medical Leave  
6 Act (29 U.S.C. 2611(2)(A)) is amended—

7 (1) by striking “at least 12 months” and insert-  
8 ing “at least 3 months”; and

9 (2) by striking “at least 1,250 hours of service  
10 with such employer during the previous 12-month  
11 period” and inserting “at least 125 hours of service  
12 with such employer during the previous 3-month pe-  
13 riod”.

### 14 **SEC. 202. RETIREMENT AND HEALTH CARE BENEFITS.**

15 (a) TREATMENT OF EMPLOYEES WORKING AT LESS  
16 THAN FULL-TIME UNDER PARTICIPATION, VESTING, AND  
17 ACCRUAL RULES GOVERNING PENSION PLANS.—

18 (1) PARTICIPATION RULES.—

19 (A) IN GENERAL.—Section 202(a)(3) of  
20 the Employee Retirement Income Security Act  
21 of 1974 (29 U.S.C. 1052(a)(3)) is amended by  
22 adding at the end the following new subpara-  
23 graph:

1       “(E)(i) For purposes of this paragraph, in the case  
2 of any employee who, as of the beginning of the 12-month  
3 period referred to in subparagraph (A)—

4               “(I) has customarily completed 500 or more  
5 hours of service per year but less than 1,000 hours  
6 of service per year, or

7               “(II) is employed in a type of position in which  
8 employment customarily constitutes 500 or more  
9 hours of service per year but less than 1,000 hours  
10 of service per year,

11 completion of 500 hours of service within such 12-month  
12 period shall be treated as completion of 1,000 hours of  
13 service.

14       “(ii) For purposes of this subparagraph, the extent  
15 to which employment in any type of position customarily  
16 constitutes less than 1,000 hours of service per year shall  
17 be determined with respect to each pension plan in accord-  
18 ance with such regulations as the Secretary shall prescribe  
19 providing for consideration of facts and circumstances pe-  
20 culiar to the workforce constituting the participants in  
21 such plan.”.

22               (B) CONFORMING AMENDMENT.—Section  
23               204(b)(1)(E) of such Act (29 U.S.C.  
24               1054(b)(1)(E)) is amended by striking “section

1           202(a)(3)(A)” and inserting “subparagraphs  
2           (A) and (E) of section 202(a)(3)”.

3           (2) VESTING RULES.—

4                 (A) IN GENERAL.—Section 203(b)(2) of  
5           such Act (29 U.S.C. 1053(b)(2)) is amended by  
6           adding at the end the following new subpara-  
7           graph:

8           “(E)(i) For purposes of this paragraph, in the case  
9           of any employee who, as of the beginning of the period  
10          designated by the plan pursuant to subparagraph (A)—

11                 “(I) has customarily completed 500 or more  
12          hours of service per year but less than 1,000 hours  
13          of service per year, or

14                 “(II) is employed in a type of position in which  
15          employment customarily constitutes 500 or more  
16          hours of service per year but less than 1,000 hours  
17          of service per year,

18          completion of 500 hours of service within such period shall  
19          be treated as completion of 1,000 hours of service.

20                 “(ii) For purposes of this subparagraph, the extent  
21          to which employment in any type of position customarily  
22          constitutes less than 1,000 hours of service per year shall  
23          be determined with respect to each pension plan in accord-  
24          ance with such regulations as the Secretary shall prescribe  
25          providing for consideration of facts and circumstances pe-

1 culiar to the workforce constituting the participants in  
2 such plan.”.

3 (B) 1-YEAR BREAKS IN SERVICE.—Section  
4 203(b)(3) of such Act (29 U.S.C. 1053(b)(3))  
5 is amended by adding at the end the following  
6 new subparagraph:

7 “(F)(i) For purposes of this paragraph, in the case  
8 of any employee who, as of the beginning of the period  
9 designated by the plan pursuant to subparagraph (A)—

10 “(I) has customarily completed 500 or more  
11 hours of service per year but less than 1,000 hours  
12 of service per year, or

13 “(II) is employed in a type of position in which  
14 employment customarily constitutes 500 or more  
15 hours of service per year but less than 1,000 hours  
16 of service per year,

17 completion of 250 hours of service within such period shall  
18 be treated as completion of 500 hours of service.

19 “(ii) For purposes of this subparagraph, the extent  
20 to which employment in any type of position customarily  
21 constitutes less than 1,000 hours of service per year shall  
22 be determined with respect to each pension plan in accord-  
23 ance with such regulations as the Secretary shall prescribe  
24 providing for consideration of facts and circumstances pe-

1 culiar to the workforce constituting the participants in  
2 such plan.”.

3 (3) ACCRUAL RULES.—Section 204(b)(4)(C) of  
4 such Act (29 U.S.C. 1054(b)(4)(C)) is amended—

5 (A) by inserting “(i)” after “(C)”; and

6 (B) by adding at the end the following new  
7 clauses:

8 “(ii) For purposes of this subparagraph, in the case  
9 of any employee who, as of the beginning of the period  
10 designated by the plan pursuant to clause (i)—

11 “(I) has customarily completed 500 or more  
12 hours of service per year but less than 1,000 hours  
13 of service per year, or

14 “(II) is employed in a type of position in which  
15 employment customarily constitutes 500 or more  
16 hours of service per year but less than 1,000 hours  
17 of service per year,

18 completion of 500 hours of service within such period shall  
19 be treated as completion of 1,000 hours of service.

20 “(iii) For purposes of clause (ii), the extent to which  
21 employment in any type of position customarily constitutes  
22 less than 1,000 hours of service per year shall be deter-  
23 mined with respect to each pension plan in accordance  
24 with such regulations as the Secretary shall prescribe pro-  
25 viding for consideration of facts and circumstances pecu-

1 liar to the workforce constituting the participants in such  
2 plan.”.

3 (b) TREATMENT OF EMPLOYEES WORKING AT LESS  
4 THAN FULL-TIME UNDER GROUP HEALTH PLANS.

5 (1) IN GENERAL.—Part 2 of subtitle B of title  
6 I of such Act is amended—

7 (A) by redesignating section 211 (29  
8 U.S.C. 1061) as section 212; and

9 (B) by inserting after section 210 (29  
10 U.S.C. 1060) the following new section:

11 “TREATMENT OF PART-TIME WORKERS UNDER GROUP  
12 HEALTH PLANS

13 “SEC. 211. (a) IN GENERAL.—A reduction in the em-  
14 ployer-provided premium under a group health plan with  
15 respect to any employee for any period of coverage solely  
16 because the employee’s customary employment is less than  
17 full-time may be provided under such plan only if the em-  
18 ployee is described in subsection (b) and only to the extent  
19 permitted under subsection (c).

20 “(b) REDUCTIONS APPLICABLE TO EMPLOYEES  
21 WORKING LESS THAN FULL-TIME.—

22 “(1) IN GENERAL.—An employee is described in  
23 this subsection if such employee, as of the beginning  
24 of the period of coverage referred to in subsection  
25 (a)—

1           “(A) has customarily completed less than  
2           30 hours of service per week, or

3           “(B) is employed in a type of position in  
4           which employment customarily constitutes less  
5           than 30 hours of service per week.

6           “(2) REGULATIONS.—For purposes of para-  
7           graph (1), whether employment in any type of posi-  
8           tion customarily constitutes less than 30 hours of  
9           service per week shall be determined with respect to  
10          each group health plan in accordance with such reg-  
11          ulations as the Secretary shall prescribe providing  
12          for consideration of facts and circumstances peculiar  
13          to the workforce constituting the participants in  
14          such plan.

15          “(c) AMOUNT OF PERMISSIBLE REDUCTION.—The  
16          employer-provided premium under a group health plan  
17          with respect to any employee for any period of coverage,  
18          after the reduction permitted under subsection (a), shall  
19          not be less than a ratable portion of the employer-provided  
20          premium which would be provided under such plan for  
21          such period of coverage with respect to an employee who  
22          completes 30 hours of service per week.

23          “(d) DEFINITIONS.—For purposes of this section—

1           “(1) GROUP HEALTH PLAN.—The term ‘group  
2       health plan’ has the meaning provided such term in  
3       section 607(1).

4           “(2) EMPLOYER-PROVIDED PREMIUM.—

5               “(A) IN GENERAL.—The term ‘employer-  
6       provided premium’ under a plan for any period  
7       of coverage means the portion of the applicable  
8       premium under the plan for such period of cov-  
9       erage which is attributable under the plan to  
10      employer contributions.

11              “(B) APPLICABLE PREMIUM.—For pur-  
12      poses of subparagraph (A), in determining the  
13      applicable premium of a group health plan,  
14      principles similar to the principles applicable  
15      under section 604 shall apply.”.

16           (2) CONFORMING AMENDMENTS.—

17               (A) Section 201(1) of such Act (29 U.S.C.  
18       1051(1)) is amended by inserting “, except with  
19       respect to section 211” before the semicolon.

20               (B) The table of contents in section 1 of  
21       such Act is amended by striking the item relat-  
22       ing to section 211 and inserting the following  
23       new items:

“Sec. 211. Treatment of part-time workers under group health plans.  
“Sec. 212. Effective date.”.

1 (c) EXPANSION OF DEFINITION OF EMPLOYEE TO  
2 INCLUDE CERTAIN INDIVIDUALS WHOSE SERVICES ARE  
3 LEASED OR CONTRACTED FOR.—Paragraph (6) of section  
4 3 of such Act (29 U.S.C. 1002(6)) is amended—

5 (1) by inserting “(A)” after “(6)”; and

6 (2) by adding at the end the following new sub-  
7 paragraph:

8 “(B) Such term includes, with respect to any em-  
9 ployer, any person who is not an employee (within the  
10 meaning of subparagraph (A)) of such employer and who  
11 provides services to such employer, if—

12 “(i) such person has (pursuant to an agreement  
13 with such employer or any other person) performed  
14 such services for such employer (or for such em-  
15 ployer and related persons (within the meaning of  
16 section 144(a)(3) of the Internal Revenue Code of  
17 1986)) for a period of at least 1 year (6 months in  
18 the case of core health benefits) at the rate of at  
19 least 500 hours of service per year, and

20 “(ii) such services are of a type historically per-  
21 formed, in the business field of the employer, by em-  
22 ployees (within the meaning of subparagraph (A)).”.

23 (d) EFFECTIVE DATES.

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), the amendments made by this section

1 shall apply with respect to plan years beginning on  
2 or after January 1, 1995.

3 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
4 GAINED PLANS.—In the case of a plan maintained  
5 pursuant to 1 or more collective bargaining agree-  
6 ments between employee representatives and 1 or  
7 more employers ratified on or before the date of the  
8 enactment of this Act, paragraph (1) shall be ap-  
9 plied to benefits pursuant to, and individuals covered  
10 by, any such agreement by substituting for “Janu-  
11 ary 1, 1995” the date of the commencement of the  
12 first plan year beginning on or after the earlier of—

13 (A) the later of—

14 (i) January 1, 1995, or

15 (ii) the date on which the last of such  
16 collective bargaining agreements termi-  
17 nates (determined without regard to any  
18 extension thereof after the date of the en-  
19 actment of this Act), or

20 (B) January 1, 1997.

21 (3) PLAN AMENDMENTS.—If any amendment  
22 made by this section requires an amendment to any  
23 plan, such plan amendment shall not be required to  
24 be made before the first plan year beginning on or  
25 after January 1, 1996, if—

1 (A) during the period after such amend-  
2 ment made by this section takes effect and be-  
3 fore such first plan year, the plan is operated  
4 in accordance with the requirements of such  
5 amendment made by this section, and

6 (B) such plan amendment applies retro-  
7 actively to the period after such amendment  
8 made by this section takes effect and such first  
9 plan year.

10 A plan shall not be treated as failing to provide defi-  
11 nitely determinable benefits or contributions, or to  
12 be operated in accordance with the provisions of the  
13 plan, merely because it operates in accordance with  
14 this paragraph.

15 **SEC. 203. PENSION PORTABILITY.**

16 (a) REQUIREMENT OF PORTABLE PENSION AC-  
17 COUNTS.—

18 (1) IN GENERAL.—Part 2 of subtitle B of title  
19 I of the Employee Retirement Income Security Act  
20 of 1974 (29 U.S.C. 1051 et seq.) is amended by in-  
21 serting after section 205 the following new section:

22 **“SEC. 205A. PORTABILITY REQUIREMENTS FOR DEFINED**  
23 **CONTRIBUTION PLANS.**

24 **“(a) DIRECT TRANSFERS.—**

1           “(1) IN GENERAL.—Each defined contribution  
 2           plan shall, at the election of an employee upon separation from service, make a direct trustee-to-trustee  
 3           transfer of the portion of the employee’s eligible  
 4           amount specified in the election to a portable pension account specified in the election which—

7                       “(A) is maintained by a qualified pension  
 8                       plan which agrees to accept the transfer, or

9                       “(B) is established by the individual on the  
 10                      individual’s own behalf.

11           “(2) TIME FOR TRANSFER.—The transfer  
 12           under paragraph (1) shall be made no later than 60  
 13           days after the date of the employee’s separation  
 14           from service.

15           “(b) PORTABLE PENSION ACCOUNTS.—For purposes  
 16           of this section—

17                       “(1) IN GENERAL.—The term ‘portable pension  
 18                       account’ means—

19                       “(A) in the case of a qualified pension  
 20                       plan, an individual account plan, an individual  
 21                       account within the plan, or simplified employee  
 22                       pension under section 408(k) of the Internal  
 23                       Revenue Code of 1986 meeting the requirements of the following paragraphs of this subsection, and  
 24                         
 25

1           “(B) in the case of an individual, an indi-  
2           vidual retirement plan meeting such require-  
3           ments.

4           “(2) DISTRIBUTION REQUIREMENTS.—

5           “(A) IN GENERAL.—The requirements of  
6           this paragraph are met if distributions from the  
7           account—

8           “(i) may only be made in a permitted  
9           retirement income form, and

10          “(ii) may only be made with the con-  
11          sent of the participant.

12          “(B) PERMITTED RETIREMENT INCOME  
13          FORM.—For purposes of subparagraph (A), a  
14          permitted retirement income form is as follows:

15          “(i) A qualified joint and survivor an-  
16          nuity (within the meaning of section  
17          205(d)).

18          “(ii) Any other joint life annuity (in-  
19          cluding a cash refund annuity).

20          “(iii) A single life annuity (including a  
21          cash refund annuity).

22          “(iv) Any series of substantially equal  
23          periodic payments described in section  
24          72(t)(2)(A)(iv) of the Internal Revenue

1           Code of 1986 which are not part of an an-  
2           nuity described in the preceding clauses.

3           “(3) SPOUSAL CONSENT.—The requirements of  
4           this paragraph shall not be met unless the account  
5           provides that any election as to form of benefit must  
6           meet spousal consent requirements which are iden-  
7           tical to the requirements of section 205(c)(2).

8           “(c) ELIGIBLE AMOUNT.—For purposes of this sec-  
9           tion, the term ‘eligible amount’ means, with respect to any  
10          participant, the balance to the credit of the participant  
11          as of the date of the distribution, including interest on  
12          such balance through the date of the distribution.

13          “(d) OTHER DEFINITIONS AND RULES.—For pur-  
14          poses of this section—

15                 “(1) QUALIFIED PLAN.—The term ‘qualified  
16                 plan’ means—

17                         “(A) a plan described in section 401(a) of  
18                         the Internal Revenue Code of 1986 which in-  
19                         cludes a trust which is exempt from tax under  
20                         section 501(a) of such Code,

21                         “(B) an annuity plan described in section  
22                         403(a) of such Code, and

23                         “(C) an annuity contract described in sec-  
24                         tion 403(b) of such Code.

1           “(2) INDIVIDUAL RETIREMENT PLAN.—The  
2           term ‘individual retirement plan’ means—

3                   “(A) an individual retirement account de-  
4                   scribed in section 408(a) of such Code, and

5                   “(B) an individual retirement annuity de-  
6                   scribed in section 408(b) of such Code.

7           “(3) BENEFICIARIES OR ALTERNATE PAYEES.—  
8           In the case of an individual who is a beneficiary of  
9           the participant or an alternate payee (within the  
10          meaning of section 206(d)(3)(K)) under a plan, such  
11          individual shall be treated in the same manner as if  
12          a participant in the plan.”

13          (2) CONFORMING AMENDMENTS.—

14                (A) Section 204(g)(2) of the Employee Re-  
15                tirement Income Security Act of 1974 (29  
16                U.S.C. 1054(g)(2)) is amended by adding at  
17                the end the following new sentence: “Except as  
18                otherwise provided in regulations of the Sec-  
19                retary of Labor and the Secretary of the Treas-  
20                ury, the requirements of subparagraph (B) shall  
21                not be treated as violated in the case of a direct  
22                trustee-to-trustee transfer described in section  
23                205A.”

1 (B) Section 204(d) of the Employee Re-  
 2 tirement Income Security Act of 1974 (29  
 3 U.S.C. 1054(d)) is amended—

4 (i) in paragraph (1), by striking “or”,

5 (ii) in paragraph (2), by striking the  
 6 period and inserting “, or”, and

7 (iii) by inserting after paragraph (2)  
 8 the following new paragraph:

9 “(3) a direct trustee-to-trustee transfer de-  
 10 scribed in section 205A.”

11 (C) The table of contents for part 2 of  
 12 subtitle B of title I of the Employee Retirement  
 13 Income Security Act of 1974 is amended by in-  
 14 serting after the item relating to section 205  
 15 the following new item:

“Sec. 205A. Portability requirements for defined contribution plans.”

16 (b) RECIPROCITY AGREEMENTS BETWEEN INDUSTRY  
 17 AND LABOR FUNDS.—

18 (1) ESTABLISHMENT.—The Secretary of Labor  
 19 shall establish standards for plans maintained pur-  
 20 suant to collective bargaining agreements between  
 21 employers and employee representatives which pro-  
 22 vide that 2 or more of the plans may enter into  
 23 agreements under which—

24 (A) the plans would maintain portable pen-  
 25 sion accounts described in section 205A of the

1 Employee Retirement Income Security Act of  
2 1974 (as added by section 121) for employees  
3 who terminate employment covered by 1 plan  
4 and begin employment covered by another, or

5 (B) the plans would make arrangements  
6 for employees to transfer accrued benefits and  
7 vesting rights from one plan to another.

8 (2) STANDARDS MADE AVAILABLE.—The Sec-  
9 retary of Labor shall make any standards developed  
10 under paragraph (1) available to employers and em-  
11 ployee representatives.

12 (c) INFLATION ADJUSTMENT FOR DEFERRED VEST-  
13 ED BENEFITS.—

14 (1) IN GENERAL.—Section 203 of the Employee  
15 Retirement Income Security Act of 1974 (29 U.S.C.  
16 1053) is amended by adding at the end the following  
17 new subsection:

18 “(f) DEFERRED NONFORFEITABLE BENEFITS.—If  
19 an employee’s participation in a plan is terminated before  
20 the date the employee is eligible for payment of an imme-  
21 diate annuity under the plan—

22 “(1) subsection (e) shall not apply, and

23 “(2) the plan shall provide that the employee  
24 may elect—

1           “(A) to have the plan immediately distrib-  
 2           ute the present value (using the interest rate  
 3           specified by the Secretary) of the employee’s  
 4           nonforfeitable benefit, or

5           “(B) to have the plan provide inflation ad-  
 6           justments (at the rates specified by the Sec-  
 7           retary) to such benefit during the period begin-  
 8           ning with the date of separation and ending  
 9           with the date an annuity is first payable.”

10          (2) ACCRUED BENEFIT.—Section 204(d) of the  
 11          Employee Retirement Income Security Act of 1974  
 12          (29 U.S.C. 1054(d)) is amended by adding at the  
 13          end the following new sentence: “An employee’s ac-  
 14          crued benefit under a plan shall be increased by any  
 15          inflation adjustment under section 203(f)(2)(B).”

16      **SEC. 204. UNEMPLOYMENT COMPENSATION.**

17          (a) PART-TIME EMPLOYEES; INDEPENDENT CON-  
 18          TRACTORS.—Subsection (a) of section 3304 of the Inter-  
 19          nal Revenue Code of 1986 (relating to requirements for  
 20          approval of State unemployment compensation laws) is  
 21          amended by striking “and” at the end of paragraph (17),  
 22          by redesignating paragraph (18) as paragraph (20), and  
 23          by inserting after paragraph (17) the following new para-  
 24          graphs:

1           “(18) in applying the State law provisions relat-  
2           ing to availability for work, active search for work,  
3           or refusal to accept work, to an individual seeking  
4           part-time employment, the term ‘suitable work’ shall  
5           not include any work where the individual would  
6           normally perform services for more hours per week  
7           than the number of hours per week for which the in-  
8           dividual is available, if the individual demonstrates  
9           good cause for the individual’s limited availability  
10          and such limitation does not substantially impair the  
11          individual’s current attachment to the labor force;

12          “(19) the determination of whether an individ-  
13          ual is an employee of another person shall be made  
14          in accordance with section 3306(i); and”.

15          (b) EFFECTIVE DATE.—

16               (1) IN GENERAL.—Except as provided in para-  
17               graph (2), the amendments made by this section  
18               shall take effect on November 1, 1995.

19               (2) SPECIAL RULE.—In the case of any State  
20               the legislature of which has not been in session for  
21               at least 30 calendar days (whether or not successive)  
22               between the date of the enactment of this Act and  
23               November 1, 1995, the amendments made by this  
24               section shall take effect 30 calendar days after the

1 1st day on which such legislature is in session on or  
2 after November 1, 1995.

3 **TITLE III—MISCLASSIFICATION**  
4 **OF EMPLOYEES AS INDE-**  
5 **PENDENT CONTRACTORS**

6 **SEC. 301. INTERNAL REVENUE SERVICE PROCEDURES.**

7 (a) WAIVER OF EMPLOYMENT TAX LIABILITY FOR  
8 REASONABLE GOOD FAITH MISCLASSIFICATION BASED  
9 ON COMMON LAW RULES.—Section 3509 of the Internal  
10 Revenue Code of 1986 (relating to determination of em-  
11 ployer’s liability for certain employment taxes) is amended  
12 by adding at the end the following new subsection:

13 “(e) WAIVER OF EMPLOYMENT TAX LIABILITY FOR  
14 REASONABLE GOOD FAITH MISCLASSIFICATION BASED  
15 ON COMMON LAW RULES.—

16 “(1) IN GENERAL.—For purposes of determin-  
17 ing the liability of any taxpayer for employment  
18 taxes with respect to any individual for any period,  
19 such individual shall be deemed not to have been an  
20 employee of the taxpayer for such period if—

21 “(A) the taxpayer did not treat such indi-  
22 vidual as an employee for purposes of the em-  
23 ployment taxes for such period,

24 “(B) the taxpayer’s treatment of such indi-  
25 vidual as not being an employee was based on

1 a reasonable good faith misapplication of the  
2 common law rules used for determining the em-  
3 ployer-employee relationship,

4 “(C) all Federal tax returns (including in-  
5 formation returns) required to be filed by the  
6 taxpayer with respect to such individual for  
7 such period were filed on a basis consistent with  
8 the taxpayer’s treatment of such individual as  
9 not being an employee,

10 “(D) the taxpayer (and any predecessor)  
11 did not treat any other individual holding a  
12 substantially similar position as an employee for  
13 purposes of the employment taxes for any pe-  
14 riod beginning after December 31, 1977, and

15 “(E) the taxpayer enters into a closing  
16 agreement under section 7121 with the Sec-  
17 retary (in the time and manner determined by  
18 the Secretary) agreeing to treat such individual,  
19 and any other individual holding a substantially  
20 similar position, as employees and to file all  
21 Federal employment tax returns with respect to  
22 such individuals on a basis consistent with the  
23 taxpayer’s treatment of such individuals as em-  
24 ployees.

25 “(2) DEFINITIONS AND SPECIAL RULES.—

1           “(A) EMPLOYMENT TAX.—For purposes of  
2           this subsection, the term ‘employment tax’  
3           means any tax imposed by subtitle C, including  
4           any interest, penalty, or additional amount with  
5           respect to such tax.

6           “(B) NO REFUND OR CREDIT OF OVERPAY-  
7           MENT.—No refund or credit of any overpay-  
8           ment of an employment tax resulting from the  
9           application of paragraph (1) shall be allowed,  
10          notwithstanding that the period for filing a  
11          claim for refund or credit of such overpayment  
12          is not barred on the effective date of this sub-  
13          section.”

14          (b) MODIFICATIONS TO SAFE HARBOR FOR CLASSI-  
15          FICATIONS OF INDIVIDUALS AS NONEMPLOYEES.—

16               (1) REQUIREMENT OF REASONABLE BASIS.—  
17          Paragraph (1) of section 530(a) of the Revenue Act  
18          of 1978 (relating to controversies involving whether  
19          individuals are employees for purposes of the em-  
20          ployment taxes) is amended by striking “unless the  
21          taxpayer had no reasonable basis” and inserting the  
22          following: “if the taxpayer had a reasonable basis”.

23               (2) REPEAL OF PRIOR AUDIT AS REASONABLE  
24          BASIS, ETC.—Paragraph (2) of section 530(a) of the  
25          Revenue Act of 1978 is amended—

1 (A) by striking the paragraph caption and  
 2 inserting the following: “REASONABLE BASIS  
 3 FOR NOT TREATING INDIVIDUAL AS EM-  
 4 PLOYEE.—”,

5 (B) in the matter preceding subparagraph  
 6 (A)—

7 (i) by striking “in any case”, and

8 (ii) by inserting “only” before “if the  
 9 taxpayer’s”,

10 (C) by adding “or” at the end of subpara-  
 11 graph (A), and

12 (D) by striking subparagraph (B) and by  
 13 redesignating subparagraph (C) as subpara-  
 14 graph (B).

15 (c) AUTHORITY FOR REGULATIONS AND RULINGS ON  
 16 EMPLOYMENT STATUS.—Section 530 of the Revenue Act  
 17 of 1978 is amended by striking subsection (b) and by re-  
 18 designating subsections (c) and (d) as subsections (b) and  
 19 (c), respectively.

20 (d) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by  
 22 this section shall take effect beginning on the date  
 23 which is 120 days after the date of the enactment  
 24 of this Act.

1           (2) MODIFICATIONS TO SAFE HARBOR.—The  
2       amendments made by subsection (b) shall apply to  
3       periods ending on or after the date which is 120  
4       days after the date of the enactment of this Act.

5   **SEC. 302. FEDERAL CONTRACTS.**

6       (a) CLASSIFICATION OF PERSONS AS EMPLOYEES  
7   AND INDEPENDENT CONTRACTORS UNDER CERTAIN  
8   PROCUREMENT CONTRACTS.—(1) Title III of the Federal  
9   Property and Administrative Services Act of 1949 (41  
10   U.S.C. 251 et seq.) is amended by adding at the end the  
11   following new section:

12   **“SEC. 312. CLASSIFICATION OF PERSONS AS EMPLOYEES**  
13                   **AND INDEPENDENT CONTRACTORS.**

14       “(a) INELIGIBILITY FOR GOVERNMENT CONTRACTS  
15   AND SUBCONTRACTS.—(1) A person (including any sub-  
16   sidiary, successor, or related entity of a person) shall not  
17   be eligible for a contract during the 2-year period begin-  
18   ning on the date of the issuance of any final determination  
19   under Federal law that the person (including any subsidi-  
20   ary or related entity of the person) willfully misclassified  
21   an individual for purposes of any employment tax.

22       “(2) For purposes of this subsection, a determination  
23   is final if all rights to appeal the determination, or to re-  
24   quest a review, rehearing, or redetermination of the mat-

1 ter that is the subject of the determination, have been ex-  
2 hausted or have lapsed.

3 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY  
4 EMPLOYMENT TAXES.—A person who submits a bid or  
5 proposal for a contract shall certify that the amount of  
6 the bid or proposal is adequate to pay all employment  
7 taxes with respect to all work to be performed under the  
8 contract by employees of the person.

9 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-  
10 TORS.—Each contract shall include a requirement that the  
11 contractor provide, to each person who performs work  
12 under the contract and who is treated by the contractor  
13 as an independent contractor for purposes of employment  
14 taxes, a notification regarding—

15 “(1) all obligations of the independent contrac-  
16 tor under Federal and State law to withhold and pay  
17 employment taxes with respect to work performed  
18 under the contract by the independent contractor  
19 (including work performed by employees of the inde-  
20 pendent contractor); and

21 “(2) all statutory rights and protections that  
22 are available under Federal and State law to em-  
23 ployees of the contractor and are not available to the  
24 independent contractor (including employees of the  
25 independent contractor), including rights and protec-

1        tions under the Fair Labor Standards Act of 1938,  
2        the Occupational Safety and Health Act of 1978,  
3        and title VII of the Civil Rights Act of 1964.

4        “(d) RIGHT OF ACTION.—A person who submits a  
5        bid or proposal for a contract and who suffers damages  
6        as a result of the award of the contract to a person who  
7        knowingly and willfully submits a certification under sub-  
8        section (b) with respect to the contract that is false, may  
9        bring an action for damages against the person awarded  
10       the contract in any district court of the United States in  
11       which the defendant is located.

12       “(e) DEFINITIONS.—As used in this section:

13           “(1) The term ‘employment tax’ means any tax  
14           imposed by subtitle C of the Internal Revenue Code  
15           of 1986.

16           “(2) The term ‘contract’ means a contract that  
17           is entered into by an executive agency under this  
18           title, and all subcontracts under such a contract.

19           “(3) The term ‘misclassify’ means to treat as  
20           an independent contractor an individual who is an  
21           employee.”.

22        (2) The table of contents in the first section of the  
23        Federal Property and Administrative Services Act of 1949  
24        is amended by inserting after the item relating to the last  
25        section in title III the following new item:

“Sec. 312. Classification of persons as employees and independent contractors.”.

1 (b) APPLICABILITY.—Section 312 of the Federal  
 2 Property and Administrative Services Act of 1949, as  
 3 added by subsection (a), shall apply to—

4 (1) contracts entered into under title III of  
 5 such Act after the expiration of the 180-day period  
 6 beginning on the date of the enactment of this Act;

7 (2) subcontracts under contracts covered by  
 8 paragraph (1); and

9 (3) options exercised under any such contract  
 10 after the expiration of the 180-day period beginning  
 11 on the date of the enactment of this Act.

12 **SEC. 303. DEFENSE CONTRACTS.**

13 (a) CLASSIFICATION OF PERSONS AS EMPLOYEES  
 14 AND INDEPENDENT CONTRACTORS UNDER DEFENSE  
 15 CONTRACTS.—(1) Chapter 141 of title 10, United States  
 16 Code, is amended by inserting after section 2393 the fol-  
 17 lowing new section:

18 **“§ 2393a. Classification of persons as employees and**  
 19 **independent contractors**

20 **“(a) INELIGIBILITY FOR DEFENSE CONTRACTS AND**  
 21 **SUBCONTRACTS.—(1) A person (including any subsidiary,**  
 22 **successor, or related entity of a person) shall not be eligi-**  
 23 **ble for a contract during the 2-year period beginning on**  
 24 **the date of the issuance of any final determination under**  
 25 **Federal law that the person (including any subsidiary or**

1 related entity of the person) willfully misclassified an indi-  
2 vidual for purposes of any employment tax.

3 “(2) For purposes of this subsection, a determination  
4 is final if all rights to appeal the determination, or to re-  
5 quest a review, rehearing, or redetermination of the mat-  
6 ter that is the subject of the determination, have been ex-  
7 hausted or have lapsed.

8 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY  
9 EMPLOYMENT TAXES.—A person who submits a bid or  
10 proposal for a contract shall certify that the amount of  
11 the bid or proposal is adequate to pay all employment  
12 taxes with respect to all work to be performed under the  
13 contract by employees of the person.

14 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-  
15 TORS.—Each contract shall include a requirement that the  
16 contractor shall provide, to each person who performs  
17 work under the contract and who is treated by the contrac-  
18 tor as an independent contractor for purposes of employ-  
19 ment taxes, a notification regarding—

20 “(1) all obligations of the independent contrac-  
21 tor under Federal and State law to withhold and pay  
22 employment taxes with respect to work performed  
23 under the contract by the independent contractor  
24 (including work performed by employees of the inde-  
25 pendent contractor); and

1           “(2) all statutory rights and protections that  
2           are available under Federal and State law to em-  
3           ployees of the contractor and are not available to the  
4           independent contractor (including employees of the  
5           independent contractor), including rights and protec-  
6           tions under the Fair Labor Standards Act of 1938,  
7           the Occupational Safety and Health Act of 1978,  
8           and title VII of the Civil Rights Act of 1964.

9           “(d) RIGHT OF ACTION.—A person who submits a  
10          bid or proposal for a contract and who suffers damages  
11          as a result of the award of the contract to a person who  
12          knowingly and willfully submits a certification under sub-  
13          section (b) with respect to the contract that is false, may  
14          bring an action for damages against the person awarded  
15          the contract in any district court of the United States in  
16          which the defendant is located.

17          “(e) APPLICABILITY.—This section applies to con-  
18          tracts entered into under chapter 137 of this title.

19          “(f) DEFINITIONS.—In this section:

20                 “(1) The term ‘employment tax’ means any tax  
21                 imposed by subtitle C of the Internal Revenue Code  
22                 of 1986.

23                 “(2) The term ‘contract’ includes subcontracts.

1 “(3) The term ‘misclassify’ means to treat as  
 2 an independent contractor an individual who is an  
 3 employee.”.

4 (2) The table of sections at the beginning of such  
 5 chapter is amended by adding at the end the following  
 6 new item:

“2393a. Classification of persons as employees and independent contractors.”.

7 (b) APPLICABILITY.—Section 2393a of title 10, Unit-  
 8 ed States Code, as added by subsection (a), shall apply  
 9 to—

10 (1) contracts entered into under chapter 137 of  
 11 title 10, United States Code, after the expiration of  
 12 the 180-day period beginning on the date of the en-  
 13 actment of this Act;

14 (2) subcontracts under contracts covered by  
 15 paragraph (1); and

16 (3) options exercised under any such contract  
 17 after the expiration of the 180-day period beginning  
 18 on the date of the enactment of this Act.

## 19 **TITLE IV—FEDERAL** 20 **TEMPORARY EMPLOYEES**

### 21 **SEC. 401. LIMITATION ON TEMPORARY EMPLOYMENT.**

22 It is the sense of Congress that—

23 (1) the Federal Government has appointed and  
 24 maintained employees in temporary positions that  
 25 are not appropriate for temporary appointments,

1 both by virtue of the type of work and the extended  
2 lengths of service in some cases;

3 (2) when a vacancy occurs in a position that  
4 was filled continuously by a temporary employee in  
5 the year preceding the vacancy, the Federal Govern-  
6 ment should not fill such vacancy with a temporary  
7 employee, regardless of whether the individual pre-  
8 viously employed would refill such position;

9 (3) when a vacancy occurs in a position as de-  
10 scribed under paragraph (2), the Federal Govern-  
11 ment should not establish a successor position and  
12 fill it with a temporary employee; and

13 (4) when a vacancy occurs in a position that  
14 was filled continuously by a temporary employee in  
15 the year preceding the vacancy, and the Federal  
16 Government determines there is a need for the serv-  
17 ices performed in such position, the Federal Govern-  
18 ment should establish a permanent or term position  
19 to fill such need whenever feasible.

20 **SEC. 402. HEALTH BENEFITS.**

21 (a) ELIMINATION OF SERVICE REQUIREMENT AND  
22 EMPLOYEE PAYMENT OF GOVERNMENT CONTRIBU-  
23 TION.—Section 8906a of title 5, United States Code, is  
24 amended to read as follows:

1 **“§ 8906a. Temporary employees**

2 “The Office of Personnel Management shall prescribe  
3 regulations to provide for offering health benefits plans  
4 to temporary employees under the provisions of this chap-  
5 ter.”.

6 (b) INCLUSION OF TEMPORARY EMPLOYEES.—Sec-  
7 tion 8913(b) of title 5, United States Code, is amended—

8 (1) in the second sentence by striking out “,  
9 such as short-term appointment, seasonal or inter-  
10 mittent employment, and employment of like na-  
11 ture”; and

12 (2) in paragraph (4) by striking out “and is eli-  
13 gible under section 8906a(a)”.

14 **SEC. 403. RETIREMENT BENEFITS.**

15 (a) INCLUSION OF CERTAIN TEMPORARY EMPLOY-  
16 EES UNDER CIVIL SERVICE RETIREMENT SYSTEM.—The  
17 second sentence of section 8347(g) of title 5, United  
18 States Code, is amended by inserting before the period “or  
19 any temporary employee who, in the aggregate, has com-  
20 pleted 5 years of service (in the same or different posi-  
21 tions), including service as a temporary employee.”.

22 (b) INCLUSION OF CERTAIN TEMPORARY EMPLOY-  
23 EES UNDER FEDERAL EMPLOYEES RETIREMENT SYS-  
24 TEM.—Section 8402(c)(1) of title 5, United States Code,  
25 is amended by inserting before the period “or any tem-  
26 porary employee who, in the aggregate, has completed 5

1 years of service (in the same or different positions), in-  
2 cluding service as a temporary employee”.

3 (c) CREDITABILITY OF SERVICE.—In administering  
4 the amendments made under this section, service may be  
5 taken into account whether performed before, on, or after  
6 the date of the enactment of this Act, for all purposes  
7 of chapters 83 and 84 of title 5, United States Code (in-  
8 cluding employee and Government contributions relating  
9 to such service and the computation of annuities). An em-  
10 ployee shall have service as a temporary employee (which  
11 would otherwise be excluded except for the amendments  
12 made under subsections (a) and (b) and for which no em-  
13 ployee contributions have been made) used for the com-  
14 putation of an annuity under chapters 83 and 84 of title  
15 5, United States Code (as amended by this Act) if the  
16 employee deposits such contributions (including interest)  
17 as determined by the Office of Personnel Management re-  
18 lating to such service into the Civil Service Retirement and  
19 Disability Fund. All appropriate employing agencies shall  
20 pay the applicable contributions into the Civil Service Re-  
21 tirement and Disability Fund. The Office of Personnel  
22 Management shall prescribe regulations to carry out the  
23 provisions of this subsection.

1 **SEC. 404. LIFE INSURANCE BENEFITS.**

2 Section 8716(b) of title 5, United States Code, is  
3 amended—

4 (1) in the second sentence, by striking out “,  
5 such as short-term appointment, seasonal, intermit-  
6 tent employment, and employment of like nature”;

7 (2) in paragraph (2) by striking out “or” after  
8 the semicolon;

9 (3) in paragraph (3) by striking out the period  
10 and inserting in lieu thereof “; or”; and

11 (4) by adding at the end thereof the following:

12 “(4) a temporary employee who has completed  
13 6 months of current continuous employment (in the  
14 same position or different positions), including serv-  
15 ice as a temporary employee, excluding any break in  
16 service of 5 days or less.”.



S 2504 IS—2

S 2504 IS—3

S 2504 IS—4